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Paper No.

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JUN 26 2006
OFFICE OF PETITIONS

In re Application of :
Tokura et al. : DECISION ON PETITION
Application No. 10/667,451 :
Filed: September 23, 2003 :
Attorney Docket No. 10517/185 :

This is a decision on the "REQUEST FOR RESCINDMENT OF NOTICE OF ABANDONMENT" filed June 10, 2005. This request was recently forwarded to the undersigned for consideration.

The above-identified application became abandoned for failure to file a timely and proper reply to the non-final Office action mailed October 28, 2004. The Office action set a three-month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a). No reply considered received and no extension obtained, the above-identified application became abandoned on January 29, 2005. A Notice of Abandonment was mailed on May 31, 2005.

In response, petitioner timely filed the instant petition. Petitioner states that on January 12, 2005, applicants filed a Response to Office action, as evidenced by the attached copies along with a PTO stamped postcard indicating that the Response was filed on January 12, 2005.

A postcard receipt, which itemizes and properly identifies the items, which are being filed, serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of

petitioner's postcard receipt reveals that: 1) it was date stamped as received in the USPTO on January 12, 2005; 2) it specifically identifies the items being filed, including "Response to Office Action (7 pages)" and "Request for Approval of Drawing Corrections (1 pg., Fig. 3)" and 3) it lacks any annotation of non-receipt of any item denoted on the postcard. Thus, the evidence shows that the response as re-supplied on petition was timely filed on June 10, 2005.


In view thereof, the Notice of Abandonment mailed May 31, 2005 is **VACATED** and the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Technology Center AU 3681 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and consideration of the response to the non-final Office action mailed October 28, 2004 as resubmitted on petition filed June 10, 2005.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.



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